



Federal Communications Commission  
Consumer & Governmental Affairs Bureau  
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November 24, 2003

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Federal Communications Commission  
Office of the Secretary

Jerry Cerasale  
Senior Vice President  
Government Affairs  
Direct Marketing Association, Inc.  
1111 19<sup>th</sup> Street N.W.  
Suite 1100  
Washington, D.C. 20554

Re: In the Matter of Rules and Regulations Implementing the Telephone  
Consumer Protection Act of 1991, Report and Order, CG Docket No. 02-278

Dear Mr. Cerasale:

Thank you for your letter of November 17, 2003 alerting the Commission of DMA's concern with the Commission's Opinion and Order (LNP order) released on November 10, 2003. Your letter states that the LNP Order does not address the implications of wireline-to-wireless number porting for telemarketing calls subject to the Telephone Consumer Protection Act of 1991 (TCPA) and the prohibition of the use of automated dialing systems to make any calls to any wireless telephone number.

The Commission addressed the issue of wireline-to-wireless number portability in its July 3, 2003 TCPA Order.<sup>1</sup> While it acknowledged that beginning November 24, 2003, numbers previously used for wireline service could be ported to wireless providers and that telemarketers will need to take steps that will enable telemarketers to identify these numbers, the Commission declined to mandate a specific solution, but rather decided to rely on the telemarketing industry to select solutions that best fit telemarketers' needs.

On November 21, 2003 Neustar, Inc. (NeuStar) made an *ex parte* submission in the TCPA proceeding<sup>2</sup> supplementing a May 5, 2003 *ex parte* submission<sup>3</sup> which had presented three options for the provisioning of the information telemarketers need to determine whether a telephone number belongs to a wireless numbers after implementation of an inter-modal port.

<sup>1</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, FCC 03-153, Report and Order (rel. July 3, 2003).

<sup>2</sup> See Ex Parte Letter from Mindy J. Ginsberg, Director, Government Relations and Public Policy, NeuStar, Inc., CG Docket No. 02-278 (November 21, 2003).

<sup>3</sup> See Ex Parte Letter from Kimberly Wheeler Miller, Director, Government Relations and Public Policy, NeuStar, Inc., CG Docket No. 02-278 (May, 5, 2003).

The options outlined in the November 21 submission include:

1. NeuStar, as the NPAC vendor, acting only with the explicit authorization of the NAPM, LLC, would establish a secure web site wherein telemarketers using auto-dialing technology can access the site via a personal identification number code that they receive when they sign a user agreement and register with NeuStar. NeuStar would provide daily update files via a local service management system ("LSMS") that would include the most current list of all wireless numbers listed by area code. A telemarketing entity would be able to access and download this flat file and incorporate it into its auto-dialing system.
2. A telecommunications service provider (TSP) with LSMS download capabilities may provide an information dissemination process and offer telemarketers updated NPAC information. Users who access NPAC data might be obligated to sign a user agreement. In the alternative, TSPs or any NPAC user could provide a call suppression service that would block out calls to wireless numbers ported from wireline service. Under this alternative, there would be required no contract amendment and no new users for the NPAC.
3. A third option would involve interpreting the existing agreement to which all NPAC users currently are a party such that the FCC's TCPA Order is read into an exception allowing the disclosure of NPAC data; thus authorizing the current NPAC user to provide data to telemarketers solely for the purpose of ensuring compliance with the FCC's TCPA Order. This limited authorization would enable telemarketers to contract with any of the hundreds of NPAC users to access the requisite data without compromising the confidentiality that is crucial to the successful administration of local number portability.

The November 21 *ex parte* submission presents information which was unavailable to you when you drafted your letter and voiced the concerns of DMA and its members. NeuStar explains that under these options outlined above telemarketers may obtain the necessary information from any one of the numerous NPAC users. A telemarketer may make appropriate arrangements with a user to obtain the data in a manner that best meets its business needs. Consistent with the approach adopted by the Commission to rely on the telemarketing industry to select solutions that best fit telemarketers' needs, I anticipate that you will review the November 21 *ex parte* and the options it presents to make available the information required to determine that a wireline number has been ported to a wireless service.

I would welcome an opportunity to meet with you and your staff to discuss this issue further should you deem necessary.

Sincerely,

A handwritten signature in black ink that reads "K. Dane Snowden". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

K. Dane Snowden

Chief

Consumer & Governmental Affairs Bureau

cc: John Muleta

Chief

Wireless Telecommunication Bureau